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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,659	01/07/2002	Edwin D. Neas	CHATA-100A	4594

28304 7590 09/26/2003

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EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
1723	

DATE MAILED: 09/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application N .	Applicant(s)	
	10/030,659	NEAS ET AL.	
	Examiner	Art Unit	
	Charles E. Cooley	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,9,10,12-14,16-19 and 21 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 7, 8, 11, 15, and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                         | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) = | 6) <input type="checkbox"/> Other:  |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on 5 JUL 2002 has been considered by the examiner. Note the attached PTO-1449 form.

### *Specification*

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

### *Claim Objections*

3. Claim 12 is objected to because of the following informalities:  
In line 2, replace "does" with -dose--.  
Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 6, 13, 14, 16-19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hellenberg (US 5,078,302).

The patent to Hellenberg (US 5,078,302) discloses a paint preparation device and method including vessels 50 on a support structure 44 in the form of a framework coupled to an axis member 108 to allow rotation thereof; a measurement assembly 134 with piston chamber 138 and rod 136; a receptacle support 30 for mixture receptacle 46; a user interface 20, 22, 24 and storage device 18 with instructions; dose actuator 156; tubular extension 414; and base 12 with shroud 40. The claimed method is set forth at col. 13, line 60 through col. 17, line 6.

6. Claims 1-3, 13, 14, 16-19, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hellenberg (US 5,474,211).

The patent to Hellenberg (US 5,474,211) discloses a paint preparation device and method including vessels 12 on a support structure 14 in the form of a framework coupled to an axis member to allow rotation thereof; a measurement assembly 46 with piston chamber and rod (Figs. 4-5); a receptacle support for mixture receptacle 40; a user interface and storage device 22 with instructions; and dose actuator 70. The claimed method is set forth at col. 3, line 36 through col. 6, line 49.

\* \* \*

With regard to the specified materials of the apparatus claims (e.g., see claim 2), the material or article worked upon does not limit apparatus claims and is not a major consideration when determining the patentability of said apparatus claims (MPEP 2115). "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of

Art Unit: 1723

material or article worked upon by a structure being claimed does not impart patentability to the claims." *In re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)). In

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellenberg (US 5,078,302) in view of Falcoff et al. (US 4,403,866).

Hellenberg (US 5,078,302) does not disclose the recited mixer. The patent to Falcoff et al. (US 4,403,866) discloses an apparatus for preparing a mixture including vessels 7-12 for dispensing a fluent substance into a receptacle 13 and a mixer 14 disposed in positional relationship with the receptacle. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the apparatus of Hellenberg (US 5,078,302) with a mixer disposed in a positional relationship with the receptacle into which the fluent substances are dispensed as disclosed by Falcoff et al. (US 4,403,866) for the purpose of providing sufficient mixing and homogenization of each batch of material in the receptacle.

9. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hellenberg (US 5,474,211) in view of Falcoff et al. (US 4,403,866).

Hellenberg (US 5,474,211) does not disclose the recited mixer. The patent to Falcoff et al. (US 4,403,866) discloses an apparatus for preparing a mixture including vessels 7-12 for dispensing a fluent substance into a receptacle 13 and a mixer 14 disposed in positional relationship with the receptacle. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the apparatus of Hellenberg (US 5,474,211) with a mixer disposed in a positional relationship with the receptacle into which the fluent substances are dispensed as disclosed by Falcoff et al. (US 4,403,866) for the purpose of providing sufficient mixing and homogenization of each batch of material in the receptacle.

#### ***Allowable Subject Matter***

10. Claims 4, 5, 7, 8, 11, 15, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The patent to Edstrom et al. shows the details of the dispensing assembly referred to in Hellenberg '302.

Art Unit: 1723

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (703) 308-0112. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Charles E. Cooley  
Primary Examiner  
Art Unit 1723

22 SEPTEMBER 2003